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In The
Supreme Court of the United States
October Term, 1984

SHERIFF OF THE COUNTY OF NEWAYGO, State of Michigan, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, State of Michigan, STATE OF MARYLAND,

Petitioners,

v

MARVIN ROBERT DEUR,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

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QUESTIONS FOR REVIEW

I.

WHETHER THE DECISION OF THE MICHIGAN SUPREME COURT PRESENTS A FEDERAL QUESTION FOR REVIEW BY THIS COURT.

II.

WHETHER THE NON-FUGITIVE PROVISIONS OF THE MICHIGAN EXTRADITION STATUTE, WHICH FOLLOW THE LANGUAGE OF THE UNIFORM CRIMINAL EXTRADITION ACT, REQUIRE THE MICHIGAN COURT TO ASK WHETHER A PERSON IS CHARGED WITH COMMITTING AN ACT IN MICHIGAN INTENTIONALLY RESULTING IN A CRIME IN THE DEMANDING STATE BEFORE IT PERMITS EXTRADITION.

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OPINIONS BELOW

Respondent adopts Petitioners' statement of the Opinions Below. The opinion of the Michigan Supreme Court has now been officially reported at 420 Mich 440 (1985).

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JURISDICTION

Respondent concedes the Petition was filed timely pursuant to U.S. Supreme Court rule 20.2 and 28 USC § 2101(C).

Respondent disputes jurisdiction premised upon 28 USC § 1257(3), as asserted by Petitioners. The decision of the Michigan Supreme Court, for which review is sought, was premised solely upon construction of a state statute. MCLA 780.3a; MSA 28.1285 (3-½) is Michigan's codification of § 6a Uniform Criminal Extradition Act. The Uniform Criminal Extradition Act is not a "treaty or statute of, or commission held on authority exercised under the United States" as required under 28 USC § 1257(3).

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STATEMENT OF THE CASE

Nature Of The Case And Course Of Proceedings

Respondent accepts Petitioners' description of the nature of the proceedings below.

Counterstatement Of Facts

Respondent disputes Petitioners' recitation of facts at Page 9 of Petitioners' Brief, wherein it is stated:

> The tractor and trailer were both owned by Respondent Deur, were leased to Direct Transit Lines, Inc of Grand Rapids, Michigan and were driven by Robert Keyser, an employee of Direct Transit Lines, Inc. The lease required Respondent Deur to maintain the equipment—including the brakes—in good condition as to mechanical repair and in full compliance "with the rules and requirements of all applicable regulatory authorities and all laws . . . (paragraphs 7, 3; App. 72a, 74a). The National Transportation Safety Board's report included, *inter alia,* a detailed examination of the brakes of the tractor and trailer and numerous discrepancies were noted. App. 61a. Additionally, the report noted that an April 11, 1978 safety compliance survey conducted on Direct Transit Lines, Inc revealed 46 violations of the Federal Motor Carriers Safety Regulations including failing to maintain or falsification of drivers' daily logs and failing to keep proper inspection and maintenance records. App. 64a. A subsequent inspection on February 27, 1981 revealed 127 violations including failure to maintain or falsification of drivers' daily logs and motor vehicle equipment. App. 64a.

The lease referenced related, by its terms, only to the tractor and not the trailer. The lease paragraphs referenced, again by their own terms, placed the financial responsibility for maintaining the equipment upon Respondent, but left solely to the discretion of Direct Transit the standard of maintenance and placed exclusive physical control of the vehicle in the hands of Direct Transit. Finally, although Respondent does not here dispute the findings of the safety compliance surveys referenced by

Petitioners, Respondent does not understand the relevance of the findings to the present cause. There are, and have been, no allegations by either the State of Maryland or the State of Michigan that these findings relate to any act or omission of Respondent.

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REASONS FOR DENYING THE WRIT

I. Certiorari Should Not Be Granted As No Federal Question Is Presented For Review.

Petitioners advance a twofold argument that a federal question is involved providing jurisdiction under 28 USC § 1257(3). First, Petitioners argue that because Respondent asserted claims under the Fourth, Fifth, and Fourteenth Amendments in the trial court, a federal question is involved in the judgment below. Petitioners concede, however, that the Michigan Supreme Court did not address these claims. Second, Petitioners argue that the Uniform Criminal Extradition Act (UCEA) is a federal statute falling within the purview of the Compact Clause and having Congressional approval under the Crime Control Act of 1934, 4 USC § 112(a).

Petitioners should well know jurisdiction cannot be premised upon Respondent's original claims under the Fourth, Fifth and Fourteenth Amendments of the Constitution. There is nothing in the opinion below which addresses any of these Constitutional claims. The sole issue addressed by the decisional majority of the Michigan Supreme Court was the construction of the non-fugitive provisions of the UCEA, as adopted in Michigan, and

the application of that construction to the extradition documents. Constitutional issues originally raised by Respondent, but not decided by the Court, cannot form a basis for Petitioners' appeal. Those issues might come before this Court if this Respondent sought appeal, but he is not doing so.

A State's highest court is free to interpret an enactment of its legislature, and where that interpretation is the basis for decision, no federal question is presented and no basis for review exists. *New York Times v Jascalevich,* 439 US 1317 (1978); *Herb v Pitcairn,* 324 US 117 (1954). Unless it can be said that the UCEA provisions relating to non-fugitives are federal statutes, no federal question is presented by the decision below.

Petitioners rely exclusively upon this Court's decision in *Cuyler v Adams,* 449 US 433 (1981) to support the contention that the UCEA as a whole and the non-fugitive provision, in particular, are federal law. Respondent respectfully submits this is an overly broad reading of *Cuyler, supra,* and would result, as the dissent in *Cuyler* opined, in casting all uniform state legislation as federal law.

In *New Hampshire v Maine,* 426 US 363 (1976) and *US Steel Corp v Multi State Tax Commission,* 434 US 452 (1978) this Court considered the breadth of the Compact Clause stating:

> The application of the Compact Clause is limited to agreements that are "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just Supremacy of the United States". *New Hampshire v Maine,* (*supra*), 369 quoting *Virginia v Tennessee,* 148 US at 519.

A State statute, to fall within the scope of the Compact Clause, must be "an agreement" between states. To fall within the prohibition of the Clause, it must encroach upon the supremacy of the United States.

Cuyler, (*supra*), agreeing with the dissent in *US Steel* (*supra*), recognized that Congress, in enacting legislation to approve agreements between the States, makes a political as opposed to a legal judgment. The efficacy of that Congressional action should not depend upon a legal determination that Congressional approval was mandatory under the Compact Clause. Hence, Congressional approval of State agreements will result in those agreements becoming federal law irrespective of whether Congressional approval was required in order to avoid the prohibition of the Compact Clause. As was stated:

> But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for Congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler,* (*supra*) 440.

Cuyler, however, did not say that *any* State legislation, if approved by Congress, becomes federal law under the Compact Clause. It is an essential precondition that the approved State legislation be an *agreement* between States. *Cuyler* dealt with a clear agreement between States, the *Interstate Agreement on Detainers. Cuyler* does not expressly or implicitly hold that any uniform law, adopted by more than one State, is "an agreement" as that term is used in the Compact Clause. If that was the case, then Congress, simply through expression of

its general approval, could transform any model law enacted by more than one State into federal law.

Agreements within the scope of the Compact Clause were defined by Justice Field in *Virginia v Tennessee, supra:*

> The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it, for example, as made upon a similar declaration of the border by the contracting state. The mutual declaration may then be reasonably treated as made on mutual consideration. *Id.* 519-520.

The Interstate Compact on Detainers, considered in *Cuyler, supra,* meets Justice Field's definition; the UCEA does not. There is no obligation in the UCEA requiring extradition of non-fugitives, thereby creating any expectancy or right in the demanding state to obtain the individual. The UCEA makes such extraditions wholly discretionary. There is no mutual consideration among States which have adopted the legislation. At most there is a uniform statutory provision in states which have adopted the model language without modification.

Long ago, this Court adopted the view that extraditions falling outside the scope of the Extradition Clause or its federal enabling legislation, 18 USC § 3182, were within the power of the individual states to address. *Cf. Innes v Tobin,* 240 US 127 (1916). In *New York v O'Neill,* 359 US 1 (1958), this Court decided, without reference to the Compact Clause or Congressional approval, that the individual states were free to enact uniform legislation on the subject of interstate rendition of witnesses in criminal cases. Against this background, it is clear that the

UCEA is simply a vehicle for the exercise of inherent power possessed by each of the individual states and not a vehicle to create new powers via agreement between the states.

Petitioners seek review by this Court of a decision of the Michigan Supreme Court construing those circumstances in which the Governor of Michigan may exercise his discretion to extradite a non-fugitive under state law. No federal question is presented.

II. Certiorari Should Not Be Granted Because No Special Nor Important Reason Exists For Review Of The Decision Below.

Petitioners argue that the Michigan Supreme Court's decision contradicts decisions of other State courts interpreting the non-fugitive provision of the UCEA. To support this contention, Petitioners rely upon the decisions in *Conrad v McClearn,* 166 Colo 568; 445 P2d 222 (1968); *McCullough v Darr,* 219 Kan 477; 548 P2d 1245 (1976) and *Newman v Elrod,* 72 Ill App 3rd 616; 391 NE2d (1979) *cert den,* 445 US 942 (1980). Petitioners have misperceived each case.

In *Newman,* (*supra*), plaintiff sought to challenge, factually, the merits of the demanding State's charge of conspiracy, an offense which by definition entails an element of specific intent. Unlike *Newman,* the charge against Respondent in Maryland has no specific intent element. The Illinois Court addressed the issue of whether a factual inquiry by the asylum State, on the merits of the offense charged in the demanding State, was proper. The Michigan Supreme Court decided an entirely different issue not presented in the *Newman* case.

Conrad and *McCullough*, (*supra*), considered whether or not the documents supporting the extradition sufficiently alleged that the defendant committed an act intentionally resulting in the charged offense in the demanding State. Neither decision specifically addressed whether it was the act or the crime which must be intended.

In contrast to Petitioners' claim, where other State courts have addressed the issue for which review is now sought, the decisions are consistent with the Michigan Court's interpretation. In *Sheriff, Clark County v Thompson*, 85 Nev 211, 213; 452 P2d 911 (1969) it was stated:

> The first inquiry which must be answered under the Uniform Act is whether the accused had to be present in the demanding State at the time the crime was allegedly committed in that State. We hold that such presence is not required by the Uniform Act. NRS 179.189 [§ 6a of UCEA] empowers the Governor of Nevada to surrender upon demand of the executive authority of any other State any person or property charged with *committing an act in this State, or in a third state, intentionally resulting in a crime in the demanding State* . . .

To similar effect is *State ex rel Keller v LeVander*, 283 Minn 461; 168 NW2d 491 (1969) where it was stated:

> It is clear under the laws of Minnesota that as a prerequisite to the validity of an extradition it must appear that the person confined by virtue of the extradition warrant was actually present in the demanding State at the time the offense was committed or, if not, did *perform an act outside of the demanding State intending that the result be the accomplishment of a crime in such State.* Page 463.

Despite the contention of Petitioners and the Amici parties, wholesale damage has not been rendered to the

law applicable to extraditions outside the Extradition Clause. As the Amici parties state:

> The issue is solely one of whether the extradition papers are sufficient to bring the cause within the Governor's statutory, discretionary authority . . . Amici Brief, p. 11.

The asylum State Court's scope of inquiry into non-fugitive extradition has not been expanded by the Michigan Supreme Court and remains analogous to the scope of inquiry in a fugitive context. The courts of the asylum State enjoy the right, in a fugitive context, to consider in a *habeas corpus* proceeding:

> . . . (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. *Michigan v Doran,* 439 US 282, 289 (1978).

In a non-fugitive extradition, the fourth factor is no longer the determination of the fugitive status of the demanded individual, but the determination that the demanded person "committed an act in the asylum state intentionally resulting in a crime in the demanding state."

The status of the demanded person as a fugitive has always been considered a prerequisite to allowance of the extradition. *Cf. Innes v Tobin,* 240 US 127 (1916). Similarly, state courts have long recognized that the existence of acts outside of the demanding state intentionally resulting in a crime in the demanding state is a "jurisdictional fact" necessary to the valid exercise of a governor's power. *Cf. Hagel v Hendricks,* 302 SW2d 323

(Mo App 1957); *State ex rel Wayne v Hodman,* 292 Minn 358 (1972); *Commonwealth ex rel Aronson v Price,* 412 Pa 493 (1963). The Michigan Supreme Court has done nothing more than determine that the necessary jurisdictional fact was lacking as to Respondent. The Court did not, as is suggested by Petitioners and the Amici, expand the scope of inquiry by the courts of an asylum State.

RELIEF SOUGHT

WHEREFORE, for the foregoing reasons, a Writ of Certiorari should be denied.

Respectfully submitted,

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